

Amendment No. 1 to SB1871

Crowe  
Signature of Sponsor

**AMEND Senate Bill No. 1871\***

**House Bill No. 2174**

by deleting Section 1 in its entirety and substituting instead the following language:

SECTION 1. Tennessee Code Annotated, Title 71, Chapter 5, Part 14, is amended by adding the following as new sections:

71-5-1423. If a resident appeals the facility's notice to involuntary discharge of that resident and a hearing is requested pursuant to 42 C.F.R. § 431.220(a)(3) before the bureau of TennCare:

(1) The hearing shall be conducted and a final order rendered within ninety (90) days from the date of the resident's appeal of the facility's involuntary discharge notice;

(2) The timeframe specified in subdivision (1) may be extended or continued with the consent of both the facility and the resident; and

(3) The timeframe specified in subdivision (1) may be extended by the presiding administrative law judge without the consent of the facility, but only after a showing by the resident, or the resident's representative, that the resident faces a substantial threat of irreparable damage or injury if a continuance is not granted.

71-5-1424.

(a) If an individual appeals TennCare's determination that they are not either financially or medically eligible for TennCare nursing facility services:

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(1) The hearing on the appeal shall be conducted and a final order rendered within ninety (90) days from the date of the individual's appeal;

(2) The facility shall be entitled to participate in any proceeding and hearing through the filing of a motion to intervene in that proceeding; and

(3) If a resident's appeal is successful and establishes that the individual should have been determined to be eligible for TennCare nursing facility services, the resident shall be determined to be eligible from the date of submission of the resident's TennCare financial application or pre-admission evaluation, and payment for TennCare services shall be made back to the initial date of such submission.

(b) If a final administrative order is not issued by the ninetieth day following the bureau's receipt of a request to appeal the denial of a preadmission evaluation (PAE) for any long term support or service, including nursing facility care or home and community-based services, the bureau of TennCare shall contingently authorize payment for the service sought, despite the pendency of the case and without the issuance of a judicial order. The application will be automatically granted, effective on the date shown on its face, and appropriate notice shall be

provided to the applicant, the recipient, the designated correspondent, the recipient's advocate and the nursing home, if any, in which the recipient resides. If the recipient resides in a nursing home and has been certified as Medicaid eligible, upon its submission of a claim the facility shall be reimbursed for nursing home care retroactive to the first day of residence or the date of submission of the PAE application, whichever date is the latter. Such approval and the contingent reimbursement of the facility shall continue until a final order is issued, which order denies the application and the period to request reconsideration of the final order has expired. If the PAE application is denied by the final order, there shall be no recoupment of monies paid under this subsection (b). A contingent approval upon the ninetieth day will neither moot the pending case nor be evidence of satisfaction of the medical criteria to be considered in disposing of the case, but is simply self-executing relief to ensure compliance with timelines standards for disposing of appeals. Such relief shall be withheld to the extent that delays in disposing of the appeal within ninety (90) days are the consequence of a continuance of the hearing granted at the request of the recipient or applicant, or to the extent that the administrative judge finds that the delay is otherwise attributable to the recipient's inaction.